STATE OF MICHIGAN

IN THE SUPREME COURT

TAMMY MCNEILL-MARKS,

Plaintiff/Appellee,

v

MIDMICHIGAN MEDICAL CENTER – GRATIOT,

Defendant/Appellant.

Supreme Court Case No. 154159

Court of Appeals Case No. 326606

Gratiot County Circuit Court
Case No. 2014-11876-NZ

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DEFENDANT/APPELLANT MIDMICHIGAN MEDICAL CENTER – GRATIOT'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF ITS APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF QUESTION PRESENTED

Whether the communication from plaintiff to her attorney regarding Marcia Fields's presence at MidMichigan Medical Center-Gratiot amounted to a "report," as that word is used in Section 2 of the Whistleblower Protection Act (WPA), MCL 15.362.[1]

The Court of Appeals answers, yes.

The Circuit Court did not answer this question.

Defendant answers, no.

Plaintiff answers, yes.

[1] This Court further ordered the parties, at a minimum, to address whether (1) plaintiff's communication must be to an individual with the authority to address the alleged violation of law; (2) the WPA requires that a plaintiff employee specifically intended to make a charge of a violation or suspected violation of law against another; and (3) privileged communications between a client and his or her attorney can constitute a report under the WPA. All of these issues are addressed in the Argument section, *infra*.

INTRODUCTION

Following mini oral argument on the application for leave to appeal, this Court ordered the parties to file additional supplemental briefs addressing whether the communication from plaintiff to her attorney regarding Marcia Fields's presence at MidMichigan amounted to a "report" as that word is used in MCL 15.362 of the Whistleblower Protection Act ("WPA").

Based on the statutory text as understood through the interpretive canons applied by this Court, the answer is no. McNeill-Marks's communication to her private attorney—and, therefore, agent—does not amount to a report for three reasons. First, the communication was not made to an independent third party. Second, the attorney had no authority to address the alleged violation of law. And third, McNeill-Marks did not intend to make a charge against Fields. Therefore, McNeill-Marks is not entitled to whistleblower protection under the WPA.

The Court of Appeals' published opinion to the contrary is in error. This Court should reverse that opinion and reinstate the trial court's grant of summary disposition to MidMichigan.[2]

SUMMARY OF FACTS AND PROCEEDINGS

The material facts of this case are not in dispute. MidMichigan employed McNeill-Marks as a nurse at its Alma, Michigan hospital. McNeill-Marks had a personal protection order ("PPO") against Marcia Fields. After McNeill-Marks encountered a wheelchair-bound Fields being pushed down a hallway at the hospital, she phoned her attorney, Richard Gay, and informed him of Fields's presence at the hospital. Specifically, McNeill-Marks testified:

[2] Because the question in this Court's July 7, 2017 order is similar to the first question presented in MidMichigan's application, as well as an issue addressed in MidMichigan's first Supplemental Brief, MidMichigan incorporates and continues to rely on the facts and arguments in its previous briefing with this Court.

> I did not tell him that she was there in any form as a patient or anything, **all I said was that she showed up at my workplace today** again, you know.
>
> * * *
>
> . . . **I said not to serve her** at all because she as so ill, maybe we should just hold off on this and see if it's a moot point, that she's going to pass on if she's as ill as she says she is. [Application, Exhibit 3 at 113:14-16, 115:1-4 (emphasis added).]

Nevertheless, Gay had Fields served with a copy of the PPO while she was still in the hospital. Fields filed a complaint with MidMichigan, and MidMichigan ultimately terminated McNeill-Marks's employment for violating HIPAA and breaching hospital policies on patient confidentiality.

McNeill-Marks filed this lawsuit against MidMichigan, alleging, *inter alia*, retaliation in violation of the WPA. The trial court granted MidMichigan summary disposition, but the Court of Appeals reversed in a published opinion, holding that McNeill-Marks's communication to her private attorney constituted protected activity under the WPA.

MidMichigan filed an application for leave to appeal to this Court, and this Court heard mini oral argument on the application on April 12, 2017. On July 7, 2017, this Court directed the parties to file additional supplemental briefing, addressing whether McNeill-Mark's communication to Gay constitutes a report under MCL 15.362.

ARGUMENT

I. MCNEILL-MARKS'S COMMUNICATION WITH HER ATTORNEY DOES NOT AMOUNT TO A REPORT UNDER THE WHISTLEBLOWER PROTECTION ACT.

McNeill-Marks's attorney-client communication with Gay was not protected activity under the WPA because it did not amount to a report under the WPA. MCL 15.362 provides:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

See also MCL 15.363(4) (requiring an employee to show the foregoing by clear and convincing evidence that he or she was about to report).

A. The WPA's use of "report" must be defined in its statutory context.

The goal of statutory interpretation is to "ascertain the legislative intent that may reasonably be inferred from the statutory language." *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 526; 697 NW2d 895 (2005). "The first step in that determination is to review the language of the statute itself." *Ameritech Mich v PSC (In re MCI)*, 460 Mich 396, 411; 596 NW2d 164 (1999). "Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156; 802 NW2d 281 (2011) (citations omitted). A dictionary definition supplies an undefined statutory term's plain and ordinary meaning. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004). Where a word has a specialized legal meaning, it is appropriate to consult a legal dictionary. *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 440; 716 NW2d 247 (2006).

"Although a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context." *Sweatt v Dep't of Corrections*, 468 Mich 172, 179-180; 661 NW2d 201 (2003). This Court has explained that a term must be considered in context under the doctrine of *noscitur a sociis*: "it is known from its

associates." *Breighner v Mich High Sch Ath Ass'n*, 471 Mich 217, 232; 683 NW2d 639 (2004) ("[A] statutory term cannot be viewed in isolation, but must be construed in accordance with surrounding text and the statutory scheme."); see also *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999) ("In interpreting the statute at issue, we consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme.") (citation and quotation marks omitted).

> [B]ecause a word can have many different meanings depending on the context in which it is used, and because dictionaries frequently contain multiple definitions of a given word, in light of this fact, it is important to determine the most pertinent definition of a word in light of its context. [*Feyz v Mercy Mem Hosp*, 475 Mich 663, 684 n 62; 719 NW2d 1 (2006).]

Moreover, "Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).

The WPA does not define "report," but MCL 15.362 uses the term as a transitive verb. To determine the most pertinent definition, "report" must be considered in that capacity. See *Deacon v Pandora Media, Inc*, 499 Mich 477, 485; 885 NW2d 628 (2016) ("[B]ecause those words are used as verbs in the statute, we identify the definitions of those words as verbs.").

> The transitive verb "report" means:
>
> **1 a :** to give an account of : RELATE **b :** to describe as being in a specified state <~*ed* him much improved> **2 a :** to serve as carrier of (a message) **b :** to relate the words or sense of (something said) **c :** to make a written record or summary of **d (1) :** to watch for and write about the newsworthy aspects or developments of : COVER **(2) :** to prepare or present an account of for broadcast **3 a (1) :** to give a formal or official account or statement of <the treasurer ~*ed* a balance of ten dollars> **(2) :** to return or present (a matter referred for consideration) with conclusions or recommendations **b :** to announce or relate the results of an investigation <~*ed* no sign of disease> **c :** to announce the presence arrival or sighting of **d :** to make known to the proper authorities <~a fire>; **e :** to make a

> charge of misconduct against . . . [*Merriam-Webster's Collegiate Dictionary* (11th ed).[3]]

Report has a number of definitions that clearly do not fit into the context of the WPA. For instance, it is uncontroversial that the WPA's use of "report" would not include the noun "an explosive noise" or the intransitive verb "to present oneself." See *Merriam-Webster*, *supra*. Even when limited to transitive verbs, however, "report" can be defined in multiple ways. Statutory context—supplied by the words, syntax, and grammatical structure selected by the Legislature—points to the pertinent definition for purposes of the WPA.

Turning to that context, under MCL 15.362, an employee or a person acting on behalf of the employee (the subject) reports (the transitive verb) a violation or suspected violation (the direct object) to a public body (the indirect object). The direct object indicates that "to report" an employee must make an accusation that some entity violated (or was suspected of violating) the law. This suggests that the reporter must intend to make a report in that the reporter must believe that there has been a violation of law and must believe that they are actually conveying that violation to a public body.

Similarly, the indirect object—a public body—indicates that the reporter must intend to broadcast, make public, or somehow seek a governmental remedy of the violation. Evidence of that meaning is found in the definition of "public body," MCL 15.361(d). There, the Legislature indicated that a report must be made to a governmental entity, whether a "state officer . . . in the executive branch," an "agency . . . of the legislative branch," a "regional

[3] See also *Webster's Universal College Dictionary* (1997) ("[T]o make a charge against (a person), as to a superior."); *The American Heritage College Dictionary* (4th ed) ("1. To make or present an often official, formal, or regular account of. . . . 3. To write or provide an account or summation of for publication or broadcast."); *Webster's II New College Dictionary* (3d ed) ("1. To make or present an account of, often officially, formally, or periodically. . . . 3. To write or supply an account or summation of for publication or broadcast."); *Random House Webster's College Dictionary* (2001) ("13. to make a charge against (a person), as to a superior"); accord *Black's Law Dictionary* (Deluxe 9th ed) (defining the noun "report" as "A formal oral or written presentation of facts or a recommendation for action . . . .").

governing body," a "law enforcement agency," "the judiciary," or a "body which is created by state or local authority." The involvement of a governmental entity—or, at the very least, an entity operating under governmental authority or with governmental funding, see MCL 15.361(d)(iv)—envisions that a report must be made to an entity that can remedy a violation of law through some governmental means.

For these reasons and those set forth in more detail below, "report" as used in the WPA means intentionally disclosing information to an independent third party for the purpose of correcting or remedying. See, e.g., reference to authorities, superiors, publication, charges, formality, and official reports in the dictionary definitions, *supra*; accord *Merriam- Webster's*, *supra* ("**d :** to make known to the proper authorities <~a fire>; **e :** to make a charge of misconduct against . . ."). That definition also fits with the operation of MCL 15.362, which employs governmental power, through the WPA, to prohibit an employer from taking action against a whistleblower. As Justice Larsen noted at oral argument, citing *Merriam-Webster*, *supra*, "It's not a report unless you are making a formal complaint and you can't make a formal complaint with somebody who has no ability to act on the complaint; otherwise, you're just gossiping." **Exhibit A**, 12:10-12.

This definition creates three criteria for determining whether a communication constitutes a report under the WPA. First, the communication must be made to an independent third party. Second, the employee's communication must be to an individual with the authority to address the alleged violation of law. And third, the employee must specifically intend to make a charge of a violation or suspected violation of law against another.

1. A report must be made to an independent third party.

A report must be made to an independent third party—for instance "to a superior," "to the proper authorities," or otherwise "present[ed]" to someone other than the

employee or his or her agent. This is clear from the foregoing definitions and the text of MCL 15.362, which permits an employee "or a person acting on behalf of the employee" to report a violation. That language indicates that an "employee, or a person acting on behalf of the employee"—i.e., an agent—cannot also be the *recipient* of a report.

The independence of the recipient is further reinforced by the WPA's use of the indirect object "public body." It would be grammatically bizarre if the subject of the sentence ("a person acting on behalf of the employee") was also the indirect object ("a public body"). "When the Legislature uses different words, the words are generally intended to connote different meanings. Simply put, the use of different terms within similar statutes generally implies that different meanings were intended." *United States Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009) (citation and internal quotation marks omitted).

Just as an employee cannot report a violation to himself or herself, he or she cannot report a violation to his or her own agent. Accord *Nippa v Botsford Gen Hosp*, 257 Mich App 387, 392; 668 NW2d 628 (2003) ("The law treats the principal and the agent as sharing a single identity . . . .") Thus, to constitute a report, an employee must communicate with an independent third party.

a. Attorneys "act[] on behalf of" their clients; they are not independent third parties.

It is axiomatic that attorneys act on behalf of their clients. See *Uniprop, Inc v Morganroth*, 260 Mich App 442, 447-48; 678 NW2d 638 (2004). Attorneys are the agents of their clients. See *Detroit v Whittemore*, 27 Mich 281, 286; (1873) ("The employment of counsel does not differ in its incidents, or in the rules which govern it, from the employment of an agent in any other capacity or business."); *Fletcher v Bd of Ed*, 323 Mich 343, 348-49; 35 NW2d 177

(1948). A principal has the right to control the conduct of its agent. *St Clair Intermediate Sch Dist v Intermediate Educ Ass'n*, 458 Mich 540, 558 n 18; 581 NW2d 707 (1998). As such, an employee's attorney is a "person acting on behalf of" his or her client and cannot also be the recipient of a "report" under the WPA.

b. Attorneys are ethically prohibited from sharing or using their clients' privileged information absent the client's consent.

Unlike most agents, attorneys are further restrained by the ethical requirements of their profession. Under the Michigan Rules of Professional Conduct a lawyer shall not knowingly reveal information protected by the attorney-client privilege or information that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client, MRPC 1.6(a)-(b), unless, after full disclosure, the client consents. MRPC 1.6(c)(1). Moreover, "[a] lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client . . . ." MRPC 1.6(d). "The privilege is personal to the client and cannot be waived by the attorney without the client's permission." *People v Nash*, 418 Mich 196, 219; 341 NW2d 439 (1983). As Justice McCormack stated more succintly at oral argument, "[M]y lawyer is my agent, so it's like telling myself something. And frankly, that person is not entitled to do anything it unless I tell them to do something with it." **Exhibit A**, 16:11-14.

2. A report must be made to an individual with the authority to address the alleged violation of law.

To constitute a "report," communication must be made to a recipient who has authority to take remedial action—or cause another person or entity to take remedial action—against the reported employer. Otherwise, the communication has not been made the "the proper authorities," does not constitute a "charge of misconduct," and is not disclosed for the purposes

of correcting. This interpretation is reinforced by the fact that reporting must be made to a *public body*, which indicates that the Legislature intended a report to (at least potentially) trigger direct government action in response to the violation.

This concept has been noted by several Michigan cases. In *Henry v City of Detroit*, 234 Mich App 405, 410; 594 NW2d 107 (1999), the Court of Appeals did not provide a definition of "report" but held, "On the basis of the plain language of the WPA, we interpret a type 1 whistleblower to be one who, on his own initiative, takes it upon himself to communicate the employer's wrongful conduct to a public body in an attempt to bring the, as yet hidden, violation to light *to remedy the situation or harm done by the violation*." (Emphasis added.) Accord *Brown v Mayor of Detroit*, 478 Mich 589, 594; 734 NW2d 514 (2007) (holding that whistleblower protection applies to reports made to public bodies where they are the employer being reported).

More directly, in *Wiltse v Delta City College*, unpublished opinion per curiam of the Court of Appeals, issued December 15, 2015 (Docket No. 323402), **Exhibit B**, the Court Appeals emphasized the necessity that the recipient of the report be able to remedy the violation.[4] There, the plaintiff, Delta Community College's top law enforcement officer, investigated allegations of an inappropriate sexual relationship between a professor and a student. The plaintiff confirmed that a sexual relationship had existed but concluded there was nothing criminal about it.

> Plaintiff then disclosed the nature of the investigation to many individuals, including some members of the Delta police department, his then girlfriend (now his wife), the Bay City Police Chief, the Wayne County Community College Police Chief, and Greg Mallek, who was the Athletic Director at another college and was a friend of plaintiff who had worked at Delta. The conversation with Mallek occurred in December 2012, during the

[4] Pursuant to MCR 7.215(C), *Wiltse* is relevant because it is the only Michigan case to directly confront this issue.

> work day at a restaurant over lunch, where plaintiff drank alcohol. Notably, in this conversation, plaintiff divulged the name of the professor. [*Id.* at 2.]

Delta ultimately terminated the plaintiff's employment for violating confidentiality. Plaintiff filed suit under the WPA, and the trial court granted summary disposition in favor of Delta.

The Court of Appeals affirmed, explaining:

> Plaintiff posits that he was engaged in protected activity . . . when he talked to Mallek and other about the professor/student sexual relationship. However, plaintiff was not "report[ing]" the incident to any public body. To satisfy that element, it requires more than simply relaying information to a public body. The plaintiff must have reported the incident "in an attempt to bring the, as yet hidden, violation to light *to remedy the situation or harm done by the violation*." [*Henry*, 234 Mich App at 410 (emphasis in *Wiltse*).] Like the plaintiff in *Hays*, plaintiff here did not make the disclosures in order to "remedy" anything. [*Wiltse* at 3.]

The Court of Appeals added, "even if the professor's relationship with the student constituted a Delta College policy violation, it is clear that 'reporting' to his girlfriend, the Bay City Police Chief, the Wayne County Community Police Chief, and an employee of another college was not done to remedy that violation since *none of these people would have had any authority to do anything about the policy violation*."

That holding dovetails with a hypothetical proposed by Justice Larsen at oral argument:

> Two lawyers walk into a bar . . .
>
> . . . The one is a criminal defense attorney whose client has come to him in the course of an attorney-client relationship and has disclosed other crimes that the defendant committed.
>
> And the attorney to whom this has been disclosed says to his buddy . . . also an attorney and member of the State Bar: Hey, you'll never guess what my client told me today, and he discloses all his client's confidences, which is illegal.
>
> * * *

> Assuming he did not have permission to do so. His boss turns out to be sitting in booth right behind and says, "Wow, Attorney A, my employee, really doesn't understand his ethical obligations to his client," and fires him because of the communication that one member of the State Bar made to another member of the State Bar. He says, "You can't fire me, Whistleblower. Does he win? [**Exhibit A**, 31:5-25.]

Although McNeill-Marks's counsel answered yes at oral argument, the answer is no. And the reason is determined by the text of the WPA. Any communication that touches on a violation of law with an individual who satisfies the definition of "public body" does not amount to "reporting." A report must be made to a public body that can take remedial action.

3. The WPA requires that a plaintiff intend to make a charge of a violation or suspected violation of law against another.

In *Whitman v City of Burton*, 493 Mich 303; 831 NW2d 223 (2013), this Court rejected the argument that a whistleblower's primary motivation for engaging in protected conduct must be "a desire to inform the public on matters of public concern." *Id.* at 313. As *Whitman* explained, "MCL 15.362 does not address an employee's 'primary motivation,' nor does the statute's plain language suggest or imply that *any* motivation must be proved as a prerequisite for bringing a claim." *Id.* To make a report, however, a whistleblower must intend to communicate a suspected violation to a public body. There must be intentionality to "report." Communication alone is not enough.

Hays v Lutheran Social Servs of Mich, 300 Mich App 54; 832 NW2d 433 (2013), provides the most direct analysis of this issue. There, the plaintiff was employed as a home-healthcare provider for defendant. During the course of her employment, she encountered a client who smoked marijuana. The plaintiff called 911 and asked to speak to the narcotics task force. The plaintiff then inquired about the potential consequences of "someone knowing about the drug use of another and not reporting it. At the conclusion of the conversation, when asked

by the . . . official if she would like to take any further action, plaintiff declined to do so." *Id.* at 57. Someone made a complaint about the plaintiff's breach of client confidentiality, and the defendant fired her. The plaintiff sued and ultimately won a jury verdict.

The Court of Appeals reversed. Without elaboration, *Hays* concluded that the WPA's use of "report" (as a transitive verb) was governed by definition of "report" as a noun.[5] *Id.* Accordingly, it concluded that report meant "a detailed account of an event, situation, etc., [usually] based on observation and inquiry." *Id.* at 59, citing *Random House Webster's College Dictionary* (2005). The Court of Appeals then rejected the plaintiff's WPA claim, finding that his actions did not amount to reporting because he did not provide a "'detailed account of an event, situation, etc.,' plaintiff was merely seeking to obtain information and advice." *Id.* at 60.

Although *Hays* was premised on the definition of report as a noun, that definition is consistent with the correct definition as set forth above. And in substance, *Hays* is consistent with requirement that a whistleblower intend to report (regardless of primary motivation). The plaintiff in *Hays* did not actually report a violation, she simply asked questions from which the public body may have inferred a violation. Here again, the fact that MCL 15.362 uses "report" as an action verb is important. That suggests that the employee must actively "report"; someone cannot unintentionally report a violation of law to a public body.

For instance, if a police department—a public body—is running a sting operation with undercover officers, and an employee makes a statement that implicates his or her employer

[5] In footnote 1, *Hays* further supported its decision to use that definition based on this Court's used of the same definition in *People v Holley*, 480 Mich 222, 228; 747 NW2d 856 (2008). There, this Court defined "report" as that term is used in MCL 750.483a. As in MCL 15.362, that criminal statute uses "report" as a transitive verb. And although *Holley* notes the importance of considering the part of speech a given term occupies—see 480 at 228 ("As used in the statute, the verb 'prevent' is transitive in nature, which means that there must be something that is prevented or sought to be prevented.")—this Court nevertheless used the definition "report" as a noun. See also *People v Chavis*, 468 Mich 84, 93; 658 NW2d 469 (2003) (addressing the definition of report as a noun in MCL 750.411a(1) and defining it as "1. A detailed account of an event, situation, etc. usu. based on observation or inquiry. 2. A statement or announcement. . . ."), citing *Random House Webster's College Dictionary* (2001).

in illegal activity, whistleblower protection would not attach because such statement does not amount to reporting. Thus, although the employee communicated a violation of law to a public body, that communication would not be a report because the employee did not intent to communicate a violation of law to a public body. To hold otherwise would transform "report" into "communicate," rendering the Legislature's word choice nugatory. "Report" necessarily implies some level of intentionality in the communication to another person.

B. When the pertinent definition of report is applied to the circumstances of this case, it is clear that McNeill-Marks's communication with Gay did not amount to a report under the WPA.

McNeill-Marks's communication to Gay was not a "report"; it was a private communication from McNeill-Marks to her attorney, who had no authority to direct another person or entity to take remedial action against MidMichigan. McNeill-Marks's fails to satisfy any of the three criteria for a report under the WPA.

First, Gay was not an independent third party. He was McNeill-Marks's attorney and, therefore, agent. As such, Gay was a "person acting on behalf of" McNeill-Marks and could not also be the recipient of a "report" under the WPA. Under the Michigan Rules of Professional Conduct, Gay was ethically prohibited from doing anything with the information McNeill-Marks conveyed absent her consent. Moreover, while Gay had a duty to "exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from . . . using confidences or secrets of a client . . . [,]" he breached that duty. As McNeill-Marks testified, she instructed Gay not to serve fields at the hospital, but Gay caused Fields to be served anyhow.

Second, Gay had no authority to address the alleged violation of law—Fields' presence at the hospital. As an attorney, Gay had no more authority than any other private citizen—including McNeill-Marks herself—to respond to a suspected violation of the law. That

fact does not change because Gay is a lawyer. Lawyers do not have unilateral authority to take state action; anything Gay could have done needed to be ratified by or founded on the authority of a court. Thus, for purposes of the WPA, McNeill-Marks's communication to Gay was no more a "report" than would have been McNeill-Marks telling her mother or a neighbor about Fields's presence at the hospital. Gay's power as an attorney to move a court is no more authority than a neighbor's power to call the police. In either case, the recipient of the communication does not have authority to address the alleged violation.

Third, McNeill-Marks did not intend to make a charge or a violation or suspected violation of law against Fields. She was simply calling her attorney to let him know that Fields was at the hospital. Again, McNeill-Marks specifically told Gay not to serve Fields. McNeill-Marks did not intend to remedy any suspected violation of law.

CONCLUSION

McNeill-Marks's communication with her attorney did not amount to a report under MCL 15.362 because she did not intentionally disclose information to an independent third party for the purpose of correcting or remedying. On the contrary, McNeill-Marks's was engaged in privileged communications with her own attorney and agent. And under the rules of professional conduct, Gay not only lacked the authority to address any suspected violation of law, he was prohibited from doing so because McNeill-Marks specifically instructed him not to do anything. For the same reason, McNeill-Marks did not intend to make a charge against Fields when she called Gay.

For these reasons, McNeill-Marks is not entitled to whistle blower protection. The Court of Appeals' published opinion to the contrary is in error. This Court should reverse that opinion and reinstate the trial court's grant of summary disposition to MidMichigan.

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Dated: August 17, 2017

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